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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,515	11/19/2003	Michael E. Caporali	02890061AA	4691

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EXAMINER
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WEEKS, GLORIA R

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/715,515

Applicant(s)

CAPORALI ET AL. 

Examiner

Gloria R Weeks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2003.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-38 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/19/03.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 29 recites the limitation "the receptacle positioner" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Furthermore, claim 29 claims a cover that is attached to one of the container "and" the container positioner. Page 22 lines 10-21 of the specification state that the cover can be attached to the container "or" the container positioner. Since Applicant's invention is drawn to the stacking device and not the container used in the stacking device, limitations drawn to the structure of the container should be avoided.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

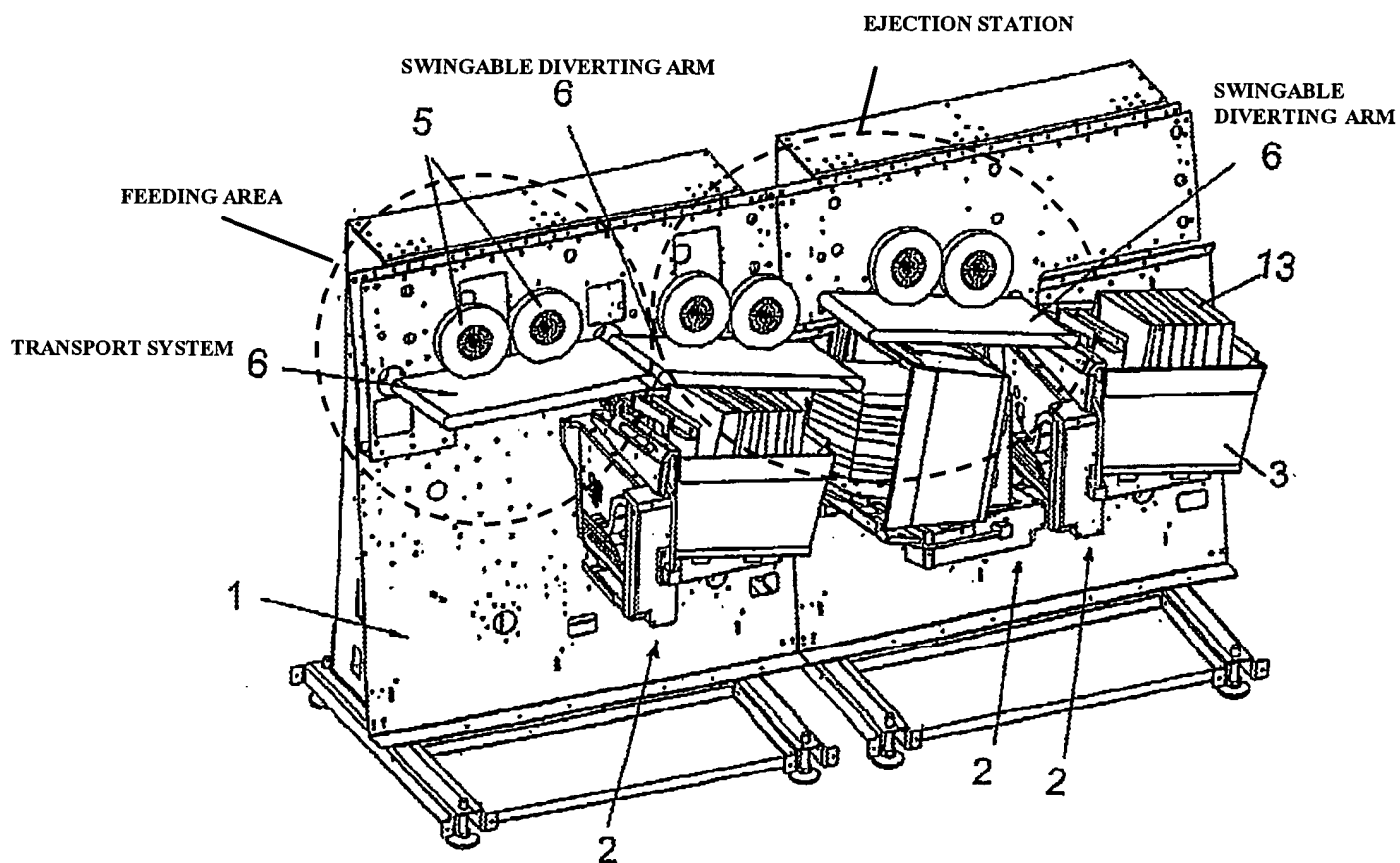
(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1-3, 6-8, 11-13, 15-19, 22-24, 26-28, 30-32 and 34-38 rejected under 35 U.S.C. 102(a) as being anticipated by Scherertz et al. (US 2003/0108416).

With respect to claims 1-3, 8, 11-13, 15-17 and 22-24, Scherertz discloses a device for stacking product, comprising: at least one pivoting mechanism (2) pivotable between a first and

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second angled position; at least one diverting mechanism (instruments that adjust 6; page 2 paragraph 22) corresponding to the at least one pivoting mechanism (2), the at least one diverting mechanism injecting product into a container (3); a feeding area; an ejection station comprising a pinch belt (5, 6) configuration that allows injection of the product into the container (3); a transport system for transporting the product to the at least one corresponding diverting mechanism; a lifting device (page 3 paragraph 32); a mechanism (10) for indexing the container(s) (3) a predetermined distance on the pivoting mechanism (2); a control for controlling the movement of the diverting arm (6) and injection of product into the container from the ejection station (page 2 paragraph 22); and an induction transport and exiting transport (page 3 paragraph 32).



Regarding claims 26-28, 30 and 31, Scherertz et al discloses a mechanisms for stacking product in a container, the mechanism comprising: a container positioner (2) constructed to rotate a container (3) between a horizontal configuration and an inclined configuration; and a control operable for activating the container positioner (2) to rotate the container (3) from the horizontal configuration to the inclined configuration to permit product to drop in a substantially horizontal orientation into the container receptacle (3), and to rotate the container (3) to position each product from the horizontal orientation to the substantially vertical orientation (page 3 paragraph 28); a conveyor (6) onto which each dropped product is captured in the substantially horizontal orientation, the conveyor being constructed and arranged to drop the product into the container (3) such that the product fall in the substantially horizontal orientation (page 2 paragraph 22); a divider (17) attached to the conveyor (6) to retain the product in a stack (13), the divider additional capable of pushing the product (page 3 paragraph 26); and at least one guide (12) to guide the product into the container; and a container lifter and lowering device including a support (11) for the bottom of the container (3; page 3 paragraph 32).

In reference to claims 32 and 34-38, Scherertz et al. discloses a method for stacking product in a vertical orientation into a container, the method comprising the steps of: transporting a container (3) to an injection area (page 3 paragraph 32); angling the container (3) to a predetermined angle greater than 0 degrees from a horizontal plane and lowering the container into the horizontal plane (2; page 3 paragraphs 23); injecting product into the container (3) in a vertically stacked orientation (page 3 paragraph 28); indexing (10) the container a predetermined distance and transporting the container (3) away in the substantially horizontal plane away from the injection area (page 3 paragraph 31); controlling a flow of the product to an ejection area (6) which injects the product into the container (3); determining (16) the amount of product in a container (3); further

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comprising the step of determining which of several injection areas to transport the product thereto for injection into the container (3; page 2 paragraph 22).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4, 5, 14 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scherertz et al. (US 2003/0108416) in view of Guenther et al. (USPN 5,503,388).

With respect to claims 4, 5 and 14, Scherertz et al. discloses a stacking device comprising a diverting mechanism, wherein the diverting mechanism includes a first and second pivotable, continuous belt diverting arm pinched against rollers (5). Scherertz et al. does not disclose the use of a continuous belt to transport product between the first and second diverting arm. Guenther et al. teaches a stacking device having a diverting mechanism, wherein the diverting mechanism (12) includes a continuous belt (18) driven proximate a first and second diverting arm (20), wherein the diverting mechanism includes a transport system (36; figure 2) extending between at least two corresponding diverting arms. It would have been obvious to one having ordinary skills in the art at the time of the invention to modify the diverting mechanism of Scherertz et al. to the diverting mechanism of Guenther et al. for the purpose of providing continuous sorting and delivery of product to containers (column 1 line 65 – column 2 line 17).

Regarding claim 25, Scherertz et al. discloses a stacking device comprising a pivoting mechanism (2) for tilting a container (3) beneath a feed area. Scherertz et al. does not disclose a

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cover positionable over the container (3). Guenther et al. teaches a stacking device wherein containers (16) are positioned beneath a feed area, and covers (14) are positionable over the containers (14) in the feed area. It would have been obvious to one having ordinary skills in the art at the time of the invention to modify the stacking device of Schererz et al. to include the positionable covers of Guenther et al. for the purpose of allowing stacks of product to accumulate above the container, prior to their deposit into the container.

7. Claims 9, 10, 20 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schererz et al. (US 2003/0108416) in view of Hendrickson et al. (USPN 6,328,302).

With respect to claims 9, 10, 20 and 33, Schererz et al. discloses a stacking device including a sensor (16) for monitoring the height of a stack or amount of product in a container (3), but does not disclose a sensor for monitoring the position or location of containers (3) in the stacking device. Hendrickson et al. teaches a stacking device having a sensor (column 12 lines 13-40) for monitoring the position or location of containers (40-1, 40-2, 40-3) in the device. It would have been obvious to one having ordinary skills in the art at the time of the invention to modify the stacking device of Schererz et al. to include the sensor of Hendrickson et al. for the purpose of ensuring proper placement of objects into desired locations. It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the device of Schererz et al. to include a photodiode sensor since Examiner takes Official Notice the use of such sensor to monitor activity in conveying assemblies is well know.

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***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R Weeks whose telephone number is (571) 272-4473. The examiner can normally be reached on 7:30 am - 6:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



grw  
March 16, 2005

Gloria R Weeks  
Examiner  
Art Unit 3721



Rinaldi I. Rada  
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